

REMARKS

The pending Office Action addresses claims 1, 3, 7, 11, 12, 16-19, 25-28, 33, 34, and 52-62. Claims 11, 12, 26, and 34 are withdrawn from consideration. Remaining claims 1, 3, 7, 16-19, 25, 27-28, 33, and 52-63 stand rejected.

Claim Amendments

Claim 3 is amended to depend from claim 1 rather than canceled claim 2. No new matter is added.

Rejections Pursuant to 35 U.S.C. §103

Claims 1, 3, 7, 16-19, 25, 27, 28, 33, and 52-62 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,379,364 of Brace in view of U.S. Publication No. 2003/0187454 of Gill. The Examiner argues that Brace discloses a guide device as claimed, but admits that Brace fails to teach opposed tabs and a protrusion that extends distally from the guide member. Thus, the Examiner relies on Gill to disclose a device having opposed tabs as recited in claims 1 and 28, and opposed tabs and a protrusion as recited in claim 52, arguing that it would have been obvious to one having ordinary skill in the art to construct the device of Brace with the opposed tabs and protrusion taught by Gill to have better orientation between the device and the plate in their attachment. Applicants respectfully disagree.

As discussed in the previous response, Brace discloses a drill guide assembly having an alignment device disposed on one end of the assembly. As shown in FIG. 9 of Brace, the alignment device includes first and second drill tubes (134, 136) having bushings (206, 208) disposed on the ends thereof. Each bushing (206, 208) is configured to extend through a fastener hole in a bone plate to align the drill tubes (134, 136) with the holes in the plates (See Col. 9, lines 9-12). The bushings are specifically configured to expand to engage the fastener holes in the plate, thereby allowing the plate to be held and manipulated by the drill guide assembly. Since Brace specifically discloses drill guide tubes

that extend into and engage fastener holes in a bone plate, there is no need to provide opposed tabs or protrusions on the device of Brace.

The flange (79) disposed on the insertion tool disclosed by Gill is necessary because is it used to maintain a predetermined spatial relationship between the components of the prosthesis (a ball component 22 and a trough component 24) during implantation of the prosthesis, and is not used for aligning the insertion tool with the prosthesis components. Brace is not confronted with this issue as Brace is not aligning separate components of a prosthesis. The strongest rational for combining references is a recognition that some advantage of expected beneficial result would be produced by the combination. (See MPEP 2144). There is no advantage to adding the protrusion of Gill to the Brace device since Brace already discloses a technique for aligning the tubes with holes in a bone plate, and the flange (79) of Gill is not even used for aligning the insertion tool with the prosthesis. In fact, the tubes of Brace will likely provide a more secure connection then the use of the protrusion, as the tubes are configured to expand and positively engage the plate.

Similarly, the opposed tabs disclosed by Gill are necessary because the insertion tool does not extend into the prosthesis components. Brace is not confronted with this issue. As stated above, the strongest rational for combining references is a recognition that some advantage of expected beneficial result would be produced by the combination. (See MPEP 2144), and there is no advantage to adding opposed tabs to the Brace device since Brace already discloses a technique for aligning the tubes with holes in a bone plate.

Applicants further note that it would not be possible to use the protrusion of Gill on the device of Brace, at least not without significantly modifying the device. The tubes of Brace engage the bone holes in a plate, and the remainder of the device is spaced a distance apart from the plate. There is no location on the device for a protrusion that could engage the plate to align the device with the plate.

Accordingly, it would not have been obvious to a person of ordinary skill in the art to modify Brace in view of Gill, and therefore claims 1, 28, and 52, as well as claims 3, 7, 16-19, 25, 27, 33, and 53-62 which depend therefrom, distinguish over Brace and Gill and represent allowable subject matter.

Conclusion

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

Date: January 16, 2007

/Lisa Adams/
Lisa Adams, Reg. No. 44,238
Attorney for Applicant(s)

Nutter McClennen & Fish LLP
World Trade Center West
155 Seaport Boulevard
Boston, MA 02210
Tel: (617)439-2550
Fax: (617)310-9550